

REMARKS

Applicant respectfully requests reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 112, 101, 102(e), 103(a) and double patenting in view of the above amendments and the following remarks submitted herewith.

35 USC §112 and §101

The examiner has rejected claim 1 under 35 U.S.C. 112, first paragraph, asserting the following: that the specification, while being enabling for a volatile silicone or perfume, does not reasonably provide enablement for a viscosity modifying agent. Almost any detergent component will modify viscosity. Similarly, the specification, while being enabling for silicone modified polysaccharids, does not reasonably provide enablement for any polymer deposition aid. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

In response applicants have amended claim 1 to further specify that the viscosity modifying agent must be at least partially soluble in the silicone. This would enable the skilled artisan to select and use a viscosity modifying agent according to the invention and in compliance with 35 U.S.C. 112. With respect to the examiner's comments concerning lack of enablement for "deposition aid", applicant's respectfully call the examiner's attention to page 12, line 20, and 24 to 28 of the instant specification where it is taught that a deposition aid assists in the deposition of silicone onto fibers by enhancing its affinity for a fabric. Furthermore, such a deposition aid must include a polymeric material containing a moiety with an affinity for fabric. This description would enable the skilled artisan to select and use a deposition aid according to the invention in the specification description and in compliance with 35 USC 112 and as called for in claim 1 (see page 3, lines 1-2).

The examiner asserts that almost any detergent component will modify viscosity. However, applicants respectfully submit that while this might be true for the viscosity of the emulsion as a whole, it is certainly not true of the component whose viscosity of – namely the

silicone oil that is to be emulsified. Therefore, for the reasons stated above the disclosure is enabling.

Applicants have further amended claim 1 to remove the "especially ..." phrase which is being incorporated in a new dependent claim. Amendments to claims 4, 5, 9-12, 18, 19, 23, 26, 28-31 and 33 were made to remove preferable expressions which now reside in new dependent claims 38-58.

The examiner has objected to claim 37 asserting that it provides for the use of a laundry treatment composition but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

The examiner has further rejected claim 37 under 35 U.S.C. 101 asserting that because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. In response, applicants have amended claim 37 to address the examiner's rejection and objection by incorporating an active step in the method claim.

Double Patenting

The examiner has provisionally rejected claims 1 and 3-37 under the judicially created doctrine of double patenting over claims 1-35 of copending Application No. 10/726,740, asserting that this is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The examiner asserts that the subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The present application claims a silicone, a viscosity modifying agent which may be a perfume and a deposition aid. The copending application claims a silicone, perfume, and the identical deposition aid.

In response, applicants respectfully assert that if the "provisional" double patenting rejection becomes the only rejection primarily in the application, the examiner is respectfully requested to withdraw the rejection allowing the instant case to issue thereby converting the provisional double patenting rejection to a double patenting rejection for Application No. 10/726,740. MPEP 804(I)(B), 8th Ed. Rev. – 3, Oct. 2005.

35 USC § 102

The examiner has rejected claims 1-37 under 35 U.S.C. 102(e) as being anticipated by Hunter, et al., US 6,939,842.

The examiner asserts that Hunter, et al., teach a laundry treatment composition comprising a silicone and a substituted polysaccharide (see abstract). An example of such a composition is an emulsion comprising nonionic surfactant, polydimethylsiloxane, and silicone substituted polysaccharide (col. 27, example 1). Another example is an emulsion comprising nonionic surfactant, aminosilicone, and silicone substituted polysaccharide (col. 27, example 1). Note that the silicones of the invention comprise polydialkyl siloxanes, amino siloxanes, and mixtures thereof (col. 34, claim 10). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

In response, applicants respectfully submit that these examples are outside the scope of claim 1 as amended which is not anticipated by US 6,939,842. US 6,939,842 discloses a laundry treatment composition comprising a silicone and a substituted polysaccharide in the form of an emulsion. The examples quoted by the examiner are of a nonionic surfactant in combination with an aminosilicone or polydimethylsiloxane and silicone substituted polysaccharide. The nonionic surfactant is completely insoluble in the silicone and therefore would not affect the silicone oil viscosity at all. In order to modify the viscosity of the silicone oil, the viscosity modifying agent must be at least partially soluble in the silicone, which is required by amended claim 1.

35 USC § 103

The examiner has rejected claims 1, 3, 5-8 and 10-37 under 35 U.S.C. 103(a) as being unpatentable over Clark, et al., WO 00/18861. The examiner asserts the following:

Clark, et al., teach a treatment method for fabrics utilizing a deposition aid having a polysaccharide polymeric backbone and a benefit agent moiety attached thereto. The benefit agent moiety undergoes a chemical change such that the affinity of the material onto the fabric is increased (see abstract). Suitable benefit agent moieties of the invention include silicones (page 14, lines 24-25). Additional preferred components of these fabric care compositions include fabric softeners, such as silicones, as well as perfumes (page 15, lines 4-10). An example of such a composition is an aqueous laundry detergent comprising a nonionic surfactant, a deposition aid polymer, and the balance water (page 45, example 7).

The reference does not specifically teach the combination of a deposition polymer, silicone, and a viscosity modifying agent such as a perfume. As all of these components, however, are either essential or preferred in the laundry treatment compositions of the invention, it would have been obvious to one of ordinary skill in the art to combine these components with a reasonable expectation of successfully obtaining a fabric treatment composition. Applicants respectfully traverse this rejection.

WO 00/18861 teaches a deposition aid having a polysaccharide polymeric backbone which has been modified in a specific way such that it comprises certain groups, such as silicones, perfumes, etc., which are attached to the backbone via a hydrolytically stable bond. There is no disclosure or suggestion of an emulsified silicone having a viscosity modifying agent dissolved or dispersed therein that is separate from the deposition and which contains polymeric material.

The present invention addresses the problem in one nonlimiting aspect of fabric softening using silicones which are normally considered too viscous to form effective emulsions. Surprisingly, the solution discovered was to dissolve or disperse a viscosity modifying agent in the silicone, according to claim 1. WO 00/18861 does not disclose or suggest the invention as claimed in claim 1.

Information Disclosure Statement

Applicants note that a copy of the signed form 1449 for the IDS mailed on June 14, 2004, was returned but not noted on the PTOL-326 form. Applicants would appreciate receiving a corrected form at the examiner's convenience or to confirm that the references cited therein were made of record.

CONCLUSION

Claims 1, 4-5, 9-12, 18-19, 23, 26, 28-31, 33 and 37 have been amended and claims 38-58 have been added. No new matter has been added by these amendments.

In light of the above amendments and remarks, applicants submit that all claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,



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